

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

Karen McNeil, et al.,

v.

Case No. 1:18-cv-33

Community Probation Services, LLC, et al.,

PSI Defendants' Renewed Motion for Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants Progressive Sentencing, Inc., PSI-Probation II, LLC, PSI-Probation, L.L.C., Tennessee Correctional Services, LLC, Timothy Cook, Markeyta Bledsoe, and Harriet Thompson (collectively, the “PSI Defendants” or “these Defendants”) move the court for summary judgment on all claims asserted by plaintiffs Tanya Mitchell and Lucinda Brandon by renewing their previously filed motion for summary judgment (Doc. No. 300) and all related pleadings on the following grounds:

1. On August 14, 2019, the PSI Defendants filed a motion for summary judgment requesting dismissal of all claims asserted by individual plaintiffs Tanya Mitchell and Lucinda Brandon. (Doc. No. 300). The motion was supported by a memorandum of law (Doc. No. 301), twenty-four exhibits (Doc Nos. 301-1 to 301-24), two attachments (Doc. Nos. 301-25 and 301-26), and a concise statement of undisputed facts. (Doc. No. 302).
2. On October 21, 2019, the plaintiffs responded with a memorandum in opposition (Doc. No. 326), supported by their own statement of 161 undisputed “facts” (Doc. No. 327), as well as a response to the PSI Defendants’ statement of undisputed facts (Doc. No. 328). The plaintiffs also filed ninety-five exhibits.
3. On November 4, 2019, the PSI Defendants filed a reply (Doc. No. 343), and objected to the plaintiffs’ statement of facts because the rules do not allow a nonmoving party to file a statement of undisputed facts, but out of an abundance of caution, the PSI Defendants also responded to each such statement as though the PSI Defendants were responding to a motion for summary judgment themselves. (Doc. No. 344).

4. On March 25, 2020, the Court denied the PSI Defendants' motion for summary judgment "without prejudice to refiling when the CPS Defendants' appeal has been resolved." (Doc. No. 361, Order, p. 2).

5. The CPS Defendants' appeal in the Sixth Circuit was initially denied on February 28, 2020 when the court found that the CPS defendants were not entitled to any of the immunities they claimed. *McNeil v. Cmty. Prob. Servs., LLC*, No. 19-5660, 2020 WL 973120 (6th Cir. Feb. 28, 2020). In its opinion, the Sixth Circuit explained that immunity was not available in part because the plaintiffs had sued the private companies in this litigation in their "official capacities" only, such that the companies "face no prospect of damages liability," *id.* at *1, and that "judicial estoppel" would prevent the plaintiffs from attempting to collect money damages from the private companies. *Id.* at *2.

6. This opinion did not end the appeal though because the plaintiffs, although successful on the immunity issues raised by CPS, petitioned the Sixth Circuit for a rehearing en banc, attempting to have the Sixth Circuit change the law especially for them so that, they could prevent CPS from asserting qualified immunity by suing it in its official capacity only, but in a special way that would also allow them to collect money damages from the company as though they had sued it in its personal capacity too.

7. On April 24, 2020, the Sixth Circuit summarily denied the petition for rehearing en banc, finding that "the issues raised in the petition were fully considered upon the original submission and decision of the case," and explaining that the petition "was circulated to the full court," but "[n]o judge has requested a vote on the suggestion for rehearing en banc." (**Exhibit 1**, Order denying plaintiffs' petition to have appeal heard en banc).

8. On May 13, 2020, the plaintiffs confirmed that they would not seek review by the United States Supreme Court. (**Exhibit 2**, 5/13/2020 email). Therefore, the CPS appeal is now concluded.

9. As such, pursuant to the Court's March 25, 2020 Order, the PSI Defendants now refile their motion for summary judgment pursuant to Rule 10(c) of the Federal Rules of Civil Procedure by adopting by reference all of the pleadings referenced in paragraph one above, as well as their reply referenced in paragraph three above.

10. If the Court prefers for any reason that these Defendants actually refile all such pleadings rather than adopt them by reference, these Defendants will do so immediately.

Respectfully Submitted,

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